

**REMARKS**

In the Office Action, claims 5 and 7-10 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the Office Action, claim 6 is rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Number 6,738,666 to Park et al.

In the Office Action, claims 6, 11, 13, 15-16, 18, and 20 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Number 6,445,949 to Kroll.

In the Office Action, claims 1-4 are allowed over the prior art of record.

In the Office Action, claims 5 and 7-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. §112, second paragraph, set forth in this Office Action and to include all of the limitations of the base claim and any intervening claims.

In the Office Action, claims 12, 14, 17, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In response thereto, claims 6, 11, and 16 have been cancelled, claims 5, 7, 8, 10, 12-15, and 17-20 have been amended, and new claims 21-24 have been added. Accordingly, claims 1-5, 7-10, 12-15, and 17-24 are now pending. Following is a discussion of the patentability of each of the pending claims.

**Preliminary Matter**

In response to the rejection of claims 5 and 7-10 under 35 U.S.C. §112, second paragraph, the following amendments have been made:

claim 5, line 2, the first occurrence of "the" has been replaced with --an--;

claim 7, line 1, "control circuitry" has been replaced with --controller--;

claim 8, line 1, "control circuitry" has been replaced with --controller--;

claim 8, line 2, "the" has been replaced with --an--;

PATENT

claim 8, line 3, "the position set of parameter values" has not been amended because sufficient antecedent basis is found in claim 7, line 6;

claim 9, lines 3-4, "the position set of parameter values" has not been amended because sufficient antecedent basis is found in claim 7, line 6;

claim 10, line 1, "control circuitry" has been replaced with --controller--;

claim 10, line 2, "the" has been replaced with --an--; and

claim 10, line 3, the second occurrence of "the" has been replaced with --an--.

### Claims 1-5

Claims 1-4 are allowed over the prior art of record, and claim 5 depends from claim 1 and is similarly patentable.

### Independent Claim 7

In the Office Action, claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, claim 7 has been rewritten in independent form including all of the limitations of base claim 6. It is respectfully submitted that amended claim 7 is in condition for allowance.

### Dependent Claims 8 and 9

Claims 8 and 9 depend from claim 7 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

### Independent Claim 10

In the Office Action, claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, claim 10 has

PATENT

been rewritten in independent form including all of the limitations of base claim 6. It is respectfully submitted that amended claim 10 is in condition for allowance.

Independent Claim 12

In the Office Action, claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, claim 12 has been rewritten in independent form including all of the limitations of base claim 11. It is respectfully submitted that amended claim 12 is in condition for allowance.

Dependent Claim 13

Claim 13 depends from claim 12 and is similarly patentable. Accordingly, it is respectfully submitted that claim 13 is in condition for allowance.

Independent Claim 14

In the Office Action, claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, claim 14 has been rewritten in independent form including all of the limitations of base claim 11. It is respectfully submitted that amended claim 14 is in condition for allowance.

Dependent Claim 15

Claim 15 depends from claim 14 and is similarly patentable. Accordingly, it is respectfully submitted that claim 15 is in condition for allowance.

Independent Claim 17

In the Office Action, claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, claim 17 has

PATENT

been rewritten in independent form including all of the limitations of base claim 16. It is respectfully submitted that amended claim 17 is in condition for allowance.

Dependent Claim 18

Claim 18 depends from claim 17 and is similarly patentable. Accordingly, it is respectfully submitted that claim 18 is in condition for allowance.

Independent Claim 19

In the Office Action, claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, claim 19 has been rewritten in Independent form including all of the limitations of base claim 16. It is respectfully submitted that amended claim 19 is in condition for allowance.

Dependent Claim 20

Claim 20 depends from claim 19 and is similarly patentable. Accordingly, it is respectfully submitted that claim 20 is in condition for allowance.

Independent Claim 21

Claim 21 recites an implantable cardiac device comprising an evoked response detection algorithm; a sensor to generate one or more signals indicative of a patient state; and a controller to receive the one or more signals from the sensor, to process the one or more signals to determine the patient state, and to modify the evoked response detection algorithm based on the detected patient state.

For at least the same reasons for allowing claim 1, it is respectfully submitted that claim 21 is in condition for allowance.

PATENT

Dependent Claims 22-24

Claims 22-24 depend from claim 21 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

CONCLUSION

In light of the above claim amendments and remarks, it is respectfully submitted that the application is in condition for allowance, and an early notice of allowance is requested.

Respectfully submitted,

9/27/04

Date

Ronald S. Tamura

Ronald S. Tamura, Reg. No. 43,179  
Patent Attorney for Applicant

**CUSTOMER NUMBER: 36802**

Serial No. 10/053,462

Page 13 of 13

Docket No. A01P1083